

29 July 1970

MEMORANDUM FOR THE RECORD

SUBJECT: Transfer of Defense Articles

1. Section 502(a)(2) of the Military Procurement Authorization bill (H.R. 17123) relates to defense articles for South Vietnamese forces, other free world forces in Vietnam, and local forces in Laos or Thailand. Specifically, 60 days after enactment such articles furnished from funds authorized for the use of U.S. Armed Forces may not be transferred unless the recipient government agrees to certain restrictions on their use and return. The President must promptly report the implementation of each such agreement to the Speaker of the House and President of the Senate. Further, while the President may waive the limitations on use or disposition, the waiver does not become effective until 15 days after written notice has been given to the Speaker and President of the Senate.

2. The conditions spelled out in Section 502(a)(2) on the use of defense articles are identical to those pertaining to the Military Assistance Program (22 USC 2314) and similar to the less encompassing conditions in the Foreign Military Sales Program (22 USC 2753).

3. See attached for language of Section 502(a)(2).



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Assistant Legislative Counsel

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Sec. 802, Subsection (a) of section 401 of Public Law 89-367, approved March 15, 1966 (80 Stat. 37), as amended, is hereby amended to read as follows:

"(a) (1) Not to exceed \$2,500,000,000 of the funds authorized for appropriation for the use of the Armed Forces of the United States under this or any other Act are authorized to be made available for their stated purposes to support: (A) Vietnamese and other free world forces in support of Vietnamese forces, (B) local forces in Laos and Thailand; and for related costs, during the fiscal year 1971 on such terms and conditions as the Secretary of Defense may determine.

(2) No defense article may be furnished to the South Vietnamese forces, other free world forces in Vietnam, or to local forces in Laos or Thailand with funds authorized for the use of the Armed Forces of the United States under this or any other Act unless the government of the forces to which the defense article is to be furnished shall have agreed that--

"(A) it will not, without the consent of the President--

"(i) permit any use of such article by anyone not an officer, employee, or agent of that government,

"(ii) transfer, or permit any officer, employee, or agent of that government to transfer such article by gift, sale, or otherwise, or

"(iii) use or permit the use of such article for purposes other than those for which furnished;

"(B) it will maintain the security of such article, and will provide substantially the same degree of security protection afforded to such article by the United States Government;

"(C) it will, as the President may require, permit continuous observation and review by, and furnish necessary information to, representatives of the United States Government with regard to the use of such article; and

"(D) unless the President consents to other disposition, it will return to the United States Government for such use or disposition as the President considers in the best interests of the United States, any such article, which is no longer needed for the purposes for which it was furnished.

The President shall promptly submit a report to the Speaker of the House of Representatives and the President of the Senate on the implementation to each agreement entered into in compliance with this paragraph. The President may not give his consent under clause (A) or (D) of this paragraph with respect to any defense article, until the expiration of fifteen days after written notice has been given to the Speaker of the House of Representatives and the President of the Senate regarding the proposed action of the President with respect to such article. As used in this paragraph the term 'defense article' shall have the same meaning prescribed for such term in section 644(d) of the Foreign Assistance Act of 1961. In order to allow a reasonable period of time for the Department of Defense to comply with the requirements of this paragraph, the provisions of such paragraph shall become effective sixty days after the date of enactment of this section."